

WORKSHOP

**Ordinance amending Chapter 4, Animals,
Article II, Animal Control,
of the Leon County Code of Laws**

**3:00 p.m.
Tuesday, December 14, 2004**

**Leon County Board of County Commissioners Chambers
Leon County Courthouse, 5th Floor**

This document distributed: December 3, 2004

Board of County Commissioners Workshop

Date of Meeting: December 14, 2004

To: Honorable Chairman and Members of the Board

From: Herbert W.A. Thiele, Esq. *CAS for*
County Attorney

Richard Ziegler *RZ*
Director of Animal Control

Subject: Conduct a workshop to review and discuss an Ordinance amending
Chapter 4, Article II of the Leon County Code of Laws

Statement of Issue:

Conduct a workshop to review and discuss an Ordinance amending Chapter 4, Article II of the *Leon County Code of Laws*. (See Attachment #1) The Division of Animal Control and the County Attorney's Office will request the Board's approval to schedule a public hearing to adopt said Ordinance.

Background:

At its regular June 8, 2004 meeting, the Board approved an Agreement and Release of Liability Granting Permanent Custody to Home For Life, Inc., for the care of the dog known as "Sailor". (See Attachment #2). However, during the discussion and consideration of the Agreement, the Board expressed concern regarding the owner's provision for shelter, care and overall well-being of the dog. At the time of the incident, the owner of the dog, Murray Sharkey, allowed the dog to remain chained to a "make-shift" shelter on a vacant lot. Although this arrangement complied with the County's requirement for humane care, the Board was particularly concerned with the "tethering" of the animal. Therefore, the Board authorized staff to schedule a workshop to discuss revisions to the Animal Control Ordinance in order to provide more stringent standards for the humane care of animals. Staff in the Division of Animal Control and the County Attorney's staff have worked diligently for the past three (3) months in reviewing Chapter 4, Animal Control Ordinance for possible revisions. Staff discovered the need, and made numerous revisions to the Ordinance.

Analysis:

In sum, the proposed new language in the attached Ordinance addresses numerous pending issues relating to animal control in Leon County. A portion of the revisions were borrowed from Chapter 767, *Florida Statutes*, which provides authority to local government agencies to adopt ordinances for regulating ownership of animals. In particular, staff devised revisions in the following sections of the County Code: Sections 4-26 Definitions; 4-29 Enforcement, Generally;

Penalties; 4-35 Running at large; 4-36: Public Nuisance Prohibited; 4-37: Humane Care Required; 4-38: Animals in Motor Vehicles; 4-76: Rabies Vaccination, 4-77: Animal bites; 4-91: Disposition generally; 4-93: Petition for Classification; 4-94: Owner's Right to Contest; 4-96: Impoundment; and 4-102: Restraint. This agenda item provides a comprehensive discussion and explanation of staff's recommendations for revisions. A number of the revisions are self-explanatory.

Section 4-26. Definitions.

Staff amended the definition for "dangerous" animal under subsections (c) and (d) to include the phrase "...an apparent attitude of attack." This was recommended because of recent court litigation wherein the counsel for the dog owner questioned the "menacing fashion" term arguing that it was a broad term. Staff borrowed the phrase "...an apparent attitude of attack," from the state law's definition of dangerous animal. Such statutory authority bolsters staff's recommendation. Revisions to the definition of "owner" involved recent events where the animal control staff encountered situations where the true dog owner had left the animal in the care of another person. Therefore, staff revised the "Owner" definition to include a firm or organization having "...control, custody and care of an animal." If the owner was under 18 years old, then responsibility would be placed on that person's guardian or parent. Staff also added new definitions for "Endanger" and "Livestock."

Section 4-29. Enforcement generally; penalties.

The enforcement section of the county code currently provides for penalties in the form of minor fines and court appearances. Staff researched other similar county animal control ordinances in Broward, Brevard, Hillsborough and Alachua counties, and discovered that Leon County, in comparison to these counties, is lenient in issuing penalties for violations of Chapter 4, Animal Control Ordinance. Therefore, staff revised the Ordinance to include a table which provides for a specific violation and financial penalties at a maximum of \$500.00 including mandatory court appearance. The revisions also provide for a second and third violation.

Section 4-35. Running at large.

Consistent with the Board's concern in the Sharkey v. Leon County animal control litigation relating to tethering of an animal, staff added a new subsection (c) which makes it a violation of the county code for anyone who "...ties, chain or otherwise tether..." an animal in such a manner that the animal is touching public or private property without the property owner's consent. In the case of the Sharkey incident, Mr. Sharkey chained his dog, "Sailor" to a common area that was owned by the Homeowner's Association. Mr. Sharkey lived with his sister, and therefore never owned real estate in the neighborhood. The neighbors expressed concern not only for their safety, but for the safety of the dog. However, the County was limited in enforcing the code because the dog received minimum requirement for proper care and shelter. Therefore, consistent with the Board's direction, staff has required consent of the property owner prior to chaining or tethering a dog in such a manner that the chain or tether allows the animal to extend onto public or private property of another.

Section 4-36. Public nuisance prohibited.

County staff revised subsection (d) and added a new subsection (e) to address subsequent nuisance violations and further define "close proximity." The new language also requires an affidavit from two different parties.

Section 4-37. Humane care required.

The existing language in the county code is clear about the requirement for providing basic humane care for animals. However, the Board directed staff to address the Sharkey issue by prohibiting tethering of animals. In the Sharkey case, the dog owner confined his dog to a make-shift chain in an isolated area of the neighborhood. Because the dog owner lived with his sister, he was not allowed to house his dog at his place of residence. Although, the dog had access to a small dog house, his only interaction with people included barking and chasing individuals as they walked near him in the common area of the neighborhood. The owner also left the dog unattended overnight. Florida law has no express prohibition on tethering, but the county does have statutory authority to adopt more stringent regulations for the protection and control of animals.

Section 4-38. Animals in motor vehicles.

It is not uncommon to observe numerous animals riding in motor vehicles in Leon County. However, county animal control staff is concerned with the increasing number of animals left unattended in cars where the conditions, including heat and lack of water, caused the dog to suffer unreasonably or die under such conditions. Therefore, county staff recommends ordinance language which prohibits such violations and provides authority to the animal control officer to take measures to rescue such animal observed by the animal control officer in the above-described predicament. The language also provides for sovereign immunity protection to the animal control officer.

Section 4-76. Rabies vaccination required.

Because of the increase in pet ownership of ferrets, animal control staff recommends that such animals also be vaccinated against rabies. In addition, Section 828.30, *Florida Statutes*, requires dogs, cats, and ferrets be vaccinated.

Section 4-91. Disposition generally.

Because the penalties are the same for both "aggressive" and "dangerous" classification, there is no real distinction between the two classifications, i.e. the animal may face either a sentence of euthanasia or permanent confinement regardless of either classification. Therefore, in order to provide a clear distinction for a lesser included violation, county staff provided new language to the aggressive classification by eliminating the euthanasia penalty, and require a penalty solely for permanent confinement for aggressive animals. For dangerous classifications, the animal will continue to face a sentence of either permanent confinement or euthanasia.

Section 4-93. Petition for classification-Generally.

By way of background, a *Petition for Classification* is generated by a concerned citizen who has either been bitten, attacked or endangered by an animal, without provocation. The county code

provides an avenue of redress to the victim to request the Leon County Animal Control Classification Committee ("Committee") to classify the animal in question as either "aggressive" or "dangerous." Such classifications require the owner of the animal to comply with stringent regulations for proper confinement of the animal including the possibility of euthanasia. Currently, such petitions are heard by the Committee in two (2) phases: an *initial* determination and a final disposition. The Committee's members include a licensed veterinarian, an informed citizen appointed by the Board and a Leon County Sheriff's representative. The Committee members volunteer their time to serve on the Committee, and on occasions, have scheduling conflicts due to their professional job commitments. Therefore, staff recommends new language which grants decision-making authority to the Director of Animal Control to enter an *initial* determination. If the animal owner disagrees with the Director's *initial* determination, then he/she may appeal the Director's decision to the Committee for Final Disposition. The Committee has authority to affirm or reverse the *initial* decision of the Animal Control Director. If the owner of the animal does not dispute the Director's *initial* determination, then the Director's decision becomes final.

4-94. Owner's right to contest final determination in the county court.

If the animal owner is not satisfied with the Committee's Final Disposition, he/she may file a Complaint to appeal the Committee's Final Disposition in court. In the context of recent county court litigation, the County Attorney's successfully defended the opposing counsel's arguments that Section 4-94 (a) was vague because it failed to inform the reader of which court to bring its Complaint appealing the Committee's decision. While the County Attorney's Office has been successful in defending animal control cases, staff recommends amending the Ordinance to specifically name the County Court as the forum to file Complaints. This recommendation is consistent with county court litigation in Ortega v. Leon County (August 2002) and Clark v. Leon County (September 2003). In the Ortega case, County Judge Jim Shelfer's order related back to the Section 767.12, F.S., requirements that such "...hearing be held in the County Court." He stated, in pertinent part:

The steadfast rules of judicial statutory interpretation are that whenever possible a Court should interpret a statute so that its effect is constitutional and the Court should interpret a statute to give credence to legislative intent. Adhering to these two rules of interpretation, this Court finds first that the legislature intends for the remedy to the dog owner to be in the County Court. This is clear by its directive. (See Attachment No. 3).

Likewise, in the Clark case, County Judge Augustus Aikens held, in pertinent part, that:

...Petitioners argue the ordinance is vague in advising litigants in which court they must turn to in order to seek relief from an erroneous Classification Committee decision. This Court agrees and finds no rational basis for the present vagueness of the County's ordinance...Persons of common intelligence must not be left to guess at the meaning of the ordinance. Where there is doubt about a

statute or ordinance in a challenge for vagueness, the doubt must be resolved in favor of the citizens and against the state. See Brown v. State, 629 So.2d 841 (Fla. 1994); In this case the county's ordinance should clearly identify the court and available remedies which are available to owners of animals classified as "aggressive" or "dangerous." Section 767.12(d), Florida Statutes requires each local governing authority to establish appeal procedures which conform to Section 767.12, Florida Statutes. That section clearly directs appeals to county court. Until Leon County clarifies its ordinance otherwise, its language: "apply to a court of competent jurisdiction for any remedies which maybe available" shall be construed to mean "Leon County Court"... (See Attachment No. 4).

Consistent with the above court orders, staff revised the language to specify appeals to the County Court. In addition, subsection (d) was revised to provide guidance on how to conduct the hearing. In court litigation, the County Attorney's Office argued that the Complaint was an appeal in the context of appellate court jurisdiction, thus, required no trial. However, both Judge Shelfer and Judge Aikens disagreed and held that the hearing to contest an animal classification shall be held by *trial de novo*. This means that the County Court hears the case anew, presiding over a full evidentiary trial. Finally, the County Attorney's Office also recommends that the ordinance require the person bringing the Complaint to bear the *initial* burden of going forward with the evidence at trial. This became an issue in the Moore v. Leon County litigation which subsequently settled out of court. In that case, opposing counsel advocated that the County had the *initial* burden of going forward with the presentation of the case. However, consistent with prior county court litigation, staff recommends that the party bringing the Complaint (the owner of the animal) always start with the *initial* burden.

Based upon the above analysis and discussion, staff recommends the Board to review and consider the attached Ordinance for future adoption. After the completion of the workshop on this agenda item, Staff will submit an Agenda item for the December 14, 2004 County Commission meeting requesting the Board's approval to schedule a public hearing for January 11, 2005 at 6:00pm to adopt the proposed ordinance.

Attachments:

1. Leon County Ordinance No. 04-_____.
2. June 8, 2004 agenda item approving an Agreement and Release of Liability
3. County Court Order (Judge Jim Shelfer) dated August 28, 2002
4. County Court Order (Judge August Aikens) dated September 25, 2003

HWAT/CAS/RZ/cc

ORDINANCE NO. 04-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING CHAPTER 4, ARTICLE II OF THE LEON COUNTY CODE OF LAWS ENTITLED "ANIMAL CONTROL"; AMENDING SECTION 4-26, "DEFINITIONS"; AMENDING SECTION 4-29, "ENFORCEMENT GENERALLY; PENALTIES"; AMENDING SECTION 4-33, "RIGHT OF ENTRY"; AMENDING SECTION 4-35, "RUNNING AT LARGE"; AMENDING SECTION 4-36, "PUBLIC NUISANCE PROHIBITED"; AMENDING SECTION 4-37, "HUMANE CARE REQUIRED"; AMENDING SECTION 4-38, "ANIMALS IN MOTOR VEHICLES"; AMENDING SECTION 4-41, "PROCEDURE UPON CITATION"; AMENDING SECTION 4-63, "REDEMPTION"; AMENDING SECTION 4-76, "RABIES VACCINATION"; AMENDING SECTION 4-77, "ANIMAL BITES"; AMENDING SECTION 4-91 "DISPOSITION GENERALLY"; AMENDING SECTION 4-93, "PETITION FOR CLASSIFICATION-GENERALLY"; AMENDING SECTION 4-94, "OWNER'S RIGHT TO CONTEST"; AMENDING SECTION 4-96, "IMPOUNDMENT"; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, that:

SECTION I. Chapter 4, Article II of the Code of Laws of Leon County, Florida, is hereby amended to read as follows:

ARTICLE II. ANIMAL CONTROL

DIVISION 1. GENERALLY

Section 4-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Aggressive animal shall mean any animal which has injured or killed a domestic animal in a first unprovoked attack while off of the premises of the owner.

Animal shall mean any domesticated animal or any captive wild animal.

Animal control officer shall mean any person employed or appointed by the county who is authorized to investigate, on public or private property, violations relating to animal control or cruelty to animals pursuant to state law and this article.

Animal shelter shall mean any facility designated by the county for the purpose of housing and caring for animals held under the authority of this article or state law.

At large shall mean any animal, other than a dog, which is off of the premises of the owner while not under the supervision of the owner, or, in the case of dogs, when any dog is off of the premises of the owner while not under the direct control of the owner.

Attack shall mean the act by any animal of approaching a domestic animal or a person in such a manner that hostile contact with the other animal or a person occurs.

Board shall mean the Board of County Commissioners.

Citation shall mean a written notice issued to a person by an animal control officer stating that the officer has probable cause to believe that the person has committed a civil infraction in violation of a duly-enacted ordinance and that the county court will hear the charge.

County health officer shall mean the person designated by the Board of County Commissioners pursuant to the definition in F.S. ch. 154 and F.A.C. ch. 10D-3.

Dangerous animal shall mean an animal that has, when unprovoked,

a) bitten, attacked, or endangered or has inflicted severe injury on a human being on public or private property; or

b) has more than once severely injured or killed a domestic animal while off the owner's property; or

c) has, when unprovoked, chased or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion, or an apparent attitude of attack,

d) provided that such actions as set forth and described in paragraphs a), b) and c) above are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority; or,

e) in the case of a dog, has been used primarily or in part for the purpose of dog fighting or is a dog trained for dog fighting.

Direct control shall mean

a) immediate continuous physical control of a dog at all times by means of a leash, cord, or chain of such strength to restrain the dog, and

b) controlled by a person capable of restraining the dog, or

c) safe and secure restraint within a vehicle.

d) ~~If the controlling person is at all times fully and clearly within unobstructed sight and hearing of the dog,~~ *Voice control shall be considered direct control when the dog is actually participating in training or official showing, obedience, or field events.

e) Direct control shall not be required of dogs actually participating in a legal sport in an authorized area or of government police dogs.

Director of animal control shall mean the person designated by the county administrator to enforce the ordinances and laws pertaining to animal control and cruelty to animals.

Division of animal control shall mean the agency designated by the Board of County Commissioners to enforce the ordinances and laws pertaining to animal control and cruelty to animals.

Endanger shall mean risk of harm or imperil.

Exposure to rabies shall mean contact by any person, domestic animal or captive wild animal with saliva, brain tissue, or body fluids of a rabid animal or of an animal suspected to be rabid due to its apparent ill health, or which is of a species commonly recognized to be a carrier of rabies, such as, but not limited to, raccoons, foxes, bats, skunks, and bobcats.

Feral animal shall mean any wild cat or dog, whether it was born in the wild or reverted to a wild state due to abandonment or lack of domestication.

Impoundment shall mean the taking up and confining of an animal by the division of animal control in a manner consistent with professionally-recognized standards of humane treatment.

Livestock shall mean all domestic animals, excluding dogs, cats, ferrets, or horses, kept for use on a farm or raised for sale and profit.

Neutered shall mean rendered permanently incapable of reproduction or permanently incapable of reproduction because of physiological sterility, but only where the neutered condition has been certified by a veterinarian licensed in any state.

Owner shall mean any person, firm, or corporation or organization owning, possessing, harboring, or having control, custody and care of an animal. If the animal is owned by a person under 18 years, that person's parent or guardian. ~~keeping any animal, or in the case of a person~~

~~under the age of 18 years of age, that person's parent or legal guardian. This definition shall not apply to any veterinary clinic or boarding kennel.~~

Person shall mean any individual, firm, corporation, partnership, organization, or association.

Potential rabies carrier shall mean any species commonly recognized to be a carrier of rabies, such as, but not limited to, raccoons, foxes, bobcats, and skunks.

Public nuisance shall mean

- a) any animal which chases vehicles or molests passersby; or,
- b) any animal, ~~other than a dog~~, which runs at large upon public or private property without permission from the property owner; or,
- c) any animal which soils, defiles, or defecates on public or private property, other than the property of the owner, unless the owner immediately removes and properly disposes of it; or,
- d) any animal which causes unsanitary or dangerous conditions to exist;
- e) any feral animal; or
- f) any animal which continuously barks, howls, or otherwise disturbs the peace.

Severe injury means any physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery.

Veterinarian shall mean a person who is licensed to engage in the practice of veterinary medicine as provided for in F.S. ch. 474, Florida Statutes.

Unprovoked shall mean that the victim who has been conducting himself peacefully and lawfully has been bitten or chased in a menacing fashion or attacked by an animal.

Veterinary hospital or clinic shall mean any place or facility owned or operated by a licensed veterinarian and used for the practice of veterinary medicine in the diagnosis, treatment, and care of diseases of and injuries to animals, or used for the boarding of animals during such diagnosis, treatment or care, or used for the temporary boarding of animals belonging to the veterinarian's clients.

Section 4-27. Statutory authority.

This article is an exercise of authority under state law.

Section 4-28. Area of enforcement.

This article shall be effective throughout the unincorporated area of the county and within any incorporated area of the county upon execution of an interlocal agreement with the incorporated area specifying the terms for implementation and enforcement of this article within the incorporated area. However, this ordinance shall not be applicable to research and instructional programs conducted in the interest of medical science by universities registered with the United States Department of Agriculture and operated under federal statutes and rules.

Section 4-29. Enforcement generally; penalties.

(a) In addition to or in lieu of impounding an animal which any animal control officer or any law enforcement officer has probable cause to believe is in violation of this article the officer may issue a citation to the owner or keeper of the animal, provided, however, that upon a second conviction within the same household of a violation of sections 4-35 through 4-39, the animal shall be confined to the owner's premises by means of an enclosure approved by the division of animal control for restraining the animal and for preventing its escape.

(b) Any person to whom a citation is issued shall pay the fine by the designated date or appear in county court at the time, date and location designated in the citation.

~~(e) Minimum civil penalties for violations of this article not otherwise listed below are as follows:~~

~~(1) First violation.....\$30.00~~

~~(2) Second violation.....75.00~~

~~(3) Thereafter.....250.00~~

~~(4) Violation of sections 4-37 and 4-38:~~

~~First violation.....\$250.00~~

~~Thereafter, mandatory court appearance and a minimum fine of.....500.00~~

~~(5) Violation of section 4-39, mandatory court appearance~~

~~and a minimum fine of.....500.00~~

~~(6) Minimum civil penalty for violations which result in the destruction or loss of personal property are as follows:~~

~~First violation.....100.00~~

~~Second violation.....250.00~~

~~Thereafter, mandatory court appearance and a minimum fine of.....500.00~~

~~(7) Minimum civil penalty for violations which result in the unprovoked, biting, wounding, or attacking of a domestic animal or person are as follows:~~

~~First violation (person).....450.00~~

~~First violation (animal).....250.00~~

~~Thereafter, mandatory court appearance and a minimum fine of.....500.00~~

~~(8) Minimum civil penalties for violation of any provision pertaining to dangerous or aggressive animals which does not result in injury to a person or domestic animal are as follows:~~

~~First violation250.00~~

~~Thereafter, mandatory court appearance and a minimum fine of500.00~~

~~(9) Minimum civil penalties for violation of any provision pertaining to dangerous or aggressive animals which results in injury to a person or domestic animal.~~

~~Mandatory court appearance and a minimum fine of500.00~~

~~(d)(c)~~ Any person electing to appear or required so to appear waives the right to pay the minimum civil penalties.

~~(d)(e)~~ Penalties shall be in addition to court costs as established by the county court.

~~(e)(f)~~ The maximum civil penalty for each violation shall be \$500.00.

~~(f)(g)~~ If a person to whom a citation is issued does not contest the citation and elects to pay the applicable civil penalty in lieu of appearing in county court, the civil penalty shall be less than the maximum civil penalty.

~~(g)(h)~~ A mandatory court appearance shall be required for any of the following:

~~(1) Third and subsequent violations of this article, except as provided in section 4-~~

~~29(4), (5), (6), (7), (8), and (9).~~

~~(2) Third and subsequent violations which result in the destruction or loss of personal property.~~

~~(3) Second and subsequent violations which result in the unprovoked biting, wounding, or attacking of a domestic animal or person.~~

- (4) Second or subsequent violations of sections 4-37 and 4-38.
- (5) Violations of Section 4-39.
- (6) Second and subsequent violation of any provision pertaining to dangerous or aggressive animals which does not result in injury to a person or domestic animal.
- (7) Violation of any provision pertaining to dangerous or aggressive animals which results in injury to a person or domestic animal.

(h) Minimum civil penalties for violations of the article not otherwise listed above are as follows:

<u>Code Section</u>	<u>Description of Violation</u>	<u>1st Violation</u>	<u>2nd Violation</u>	<u>3rd Violation & thereafter</u>
4-34	Obstructing Enforcement	\$30.00	\$75.00	\$250.00
4-35	Running at Large	\$30.00	\$75.00	\$250.00
4-36	Public Nuisance Prohibited	\$30.00	\$75.00	\$250.00
4-37	Humane Care Required	\$250.00	Thereafter \$500.00 and mandatory court appearance	
4-38	Animals in Motor Vehicles	\$250.00	Thereafter \$500.00 and mandatory court appearance	
4-39	Exploitation of Animals prohibited	\$500.00 and mandatory court appearance		
	Violations which result in the destruction or loss of personal property	\$100.00	\$250.00	\$500.00 and a mandatory court appearance.
	Violations which result in the unprovoked, biting, wounding or attacking of a domestic animal or person	\$450.00 (person) \$250.00 (animal)	\$500.00 thereafter and mandatory court appearance.	
	Violations of any provision pertaining to a dangerous animal which does not result in injury to a person or domestic animal.	\$250.00	\$500.00 thereafter and mandatory court appearance.	
	Violations of any provision	\$250.00	\$500.00 thereafter	

	pertaining to aggressive animals which does not result in injury to a person or domestic animal		and mandatory court appearance.	
	Violations of any provision pertaining to dangerous animals which does result injury to a person or domestic animal.	\$500.00 and mandatory court appearance.		
	Violations of any provision pertaining to aggressive animals which does result in injury to a person or domestic animal.	\$500.00 and mandatory court appearance.		

(i) In addition to any penalties and/or court costs imposed by this Article or the Court, there shall be imposed and collected by the Clerk of the Court a \$5.00 surcharge upon each civil penalty imposed for all citations issued for violations of this Article. All funds collected as a direct result of this surcharge shall be placed in a fund by the County to be utilized for funding training of Leon County Animal Control Officers as required by Section 828.27(4)(b), Florida Statutes.

Section 4-30. Rules and regulations.

The Board of County Commissioners may, by resolution, enact reasonable rules and regulations to implement and carry out the provisions of this article and state law.

Section 4-31. Designation of enforcement officers.

(a) The Board of County Commissioners is hereby authorized to designate certain of its employees in the animal control division as enforcement officers, herein referred to as "animal control officers." The training and qualifications of the employees for such designation shall be determined by the board.

(b) The director of animal control or any animal control officer shall have the authority to enforce this article. The director of animal control and each person designated as an animal control officer pursuant to F.S. ch. 828, may issue to the known owner or keeper of such animal a warning notice or citation as defined in section 4-29.

Section 4-32. Enforcement procedures.

The procedures and guidelines used by the division of animal control in administration of this article shall be established by the board based upon recommendations from a citizen's committee consisting of a licensed veterinarian, a person knowledgeable in animal behavior, a law enforcement officer, and two citizens.

Section 4-33. Right of entry.

(a) Pursuant to F.S. §§ 828.27, 828.073, and 125.01, the director of animal control and/or any animal control officer shall have the authority to enter public or unfenced private property within the county to carry out the duties imposed by this article.

(b) Pursuant to F.S. §§ 828.27, 828.073, and 125.01, the director of animal control, and/or any animal control officer shall have the authority to enter fenced private property, exclusive of buildings, when:

- (1) The owner or keeper of an animal which has bitten or otherwise exposed a human or domestic or captive wild animal to rabies refuses to surrender such animal for rabies quarantine.
- (2) The animal being sought was at large immediately prior to the division of animal control receiving a complaint that the animal was at large chasing people or domestic animals or was causing the destruction or loss of personal property, but

subsequently returned to its owner's fenced private property, provided, however, that the animal has the capability to leave the fenced property by climbing, jumping, or crawling under the fence and provided that an attempt to contact the owner, if known, was unsuccessful.

- (3) The division of animal control is taking possession of any animal found neglected or cruelly treated pursuant to F.S. §§ 828.27, 828.073, Florida Statutes, and 125.01, Florida Statutes.

Section 4-34. Obstructing enforcement.

No person shall:

- (1) Refuse to surrender an animal upon lawful demand by the director of animal control or any animal control officer.
- (2) Interfere with the director of animal control or any animal control officer who is lawfully performing his or her duties.
- (3) Hold, hide, or conceal any animal which the director of animal control or an animal control officer has deemed to be in violation of this article.
- (4) Take or attempt to take any animal from the director of animal control or an animal control officer or from any vehicle used by him to transport animals in the legal performance of his or her duties.
- (5) Take or attempt to take any animal from an animal control shelter, a humane live trap, or an animal carrier, without proper authority.

Section 4-35. Running at large.

(a) *Generally prohibited.* It shall be unlawful for any animal dog to run or remain at large on any public street, road, alley, park or other public place.

(b) It shall be unlawful for any animal to run or remain at large upon any private property, whether under direct control or not, without the consent of the owner of such private property.

(c) It shall be a violation of this article for the owner or keeper of any animal to tie, chain or otherwise tether such animal in such a manner that it has access to public property or the property of another without consent of that property owner.

(d) The owner or keeper of any animal found running or remaining at large shall be responsible for any violation of this article.

(e) ~~(b)~~ *Dogs and cats in estrus(heat).* The owner of any female dog or cat in estrus shall keep such dog or cat confined in a building or secure enclosure, veterinary hospital, or boarding kennel in such manner that such female dog or cat cannot come in contact with a male dog or cat, except for intentional breeding purposes.

~~(f)~~(e) *Exceptions.* ~~Subsections (a) and (b)~~ This section shall not apply to:

- (1) Any dog actually engaged in a legal sport, including supervised hunting within authorized areas.
- (2) Any dog or cat being officially showed or trained.
- (3) ~~Seeing eye-, or hearing ear-, or other service dogs for the handicapped.~~ Any animal that is especially trained to assist or provide personal services for a disabled person, as defined under the American With Disabilities Act.
- (4) Government police dogs.

Section 4-36. Public nuisance prohibited.

(a) It shall be unlawful for any person to allow his or her animal to become a public nuisance.

(b) The owner of any domestic or captive wild animal which is a public nuisance shall be subject to the procedures and penalties set forth in section 4-29.

(c) Any animal which is feral shall be classified as a public nuisance and shall be impounded and humanely euthanized. Feral animals shall not be required to be held for a minimum period of time as is required for other stray animals (as provided in division 2).

(d) ~~When an animal control officer or a law enforcement officer witnesses an animal continuously barking, howling or otherwise disturbing the peace, the owner shall first be given written notification by the county that the animal's behavior constitutes a public nuisance, that the owner is required to make reasonable efforts to abate the nuisance, and that subsequent violations may result in the issuance of a citation to the owner for allowing his or her animal become a public nuisance.~~ Any nuisance complaint may be investigated by animal control or law enforcement. The owner shall first be given written notification by the county that the animal's behavior constitutes a public nuisance, that the owner is required to make reasonable effort to abate the nuisance within seven (7) calendar days of the written notice of violation, and that subsequent violations may result in the issuance of a citation to the owner for allowing his or her animal to become a nuisance.

(e) Subsequent violations, after warning, shall be based on the animal control officer or law enforcement having personal knowledge of the nuisance or at least two (2) affidavits from different parties residing in close proximity to the alleged nuisance must be received. Close

proximity shall mean residing within a radius of 200 feet from the residence or location of the offending animal but shall not preclude the consideration of evidence and testimony of persons living more than 200 feet from the residence or location of the offending animal. One affidavit may be sufficient to warrant an investigation where there is only one party in close proximity to the alleged nuisance.

Section 4-37. Humane care required.

(a) No owner shall fail to provide his or her animal with sufficient and wholesome food, proper shelter and protection from the weather at all times, veterinary care when needed to prevent suffering, and with humane care and treatment, including sufficient exercise space. The owner of an animal shall provide clean water for the animal in a sufficient quantity to maintain the animal in a healthy condition. Water shall be provided at all times in a stable container which is sized appropriately for the animal's species and breed.

(b) No person shall overload, overwork, torture, or torment, deprive of necessary sustenance, beat, mutilate or inhumanely kill, or otherwise abuse any animal or cause or permit the same to be done.

(c) No person shall abandon any animal by forsaking the animal entirely or by neglecting or refusing to provide or perform the legal obligations for care and support of the animal.

(d) Any person who, as the operator of a motor vehicle, strikes a domesticated animal, should immediately report such incident to any law enforcement agency or to the Division of Animal Control.

(e) Tethering. No person shall under any circumstances tether or otherwise confine any animal in a manner that is injurious to the animal's health, safety and well-being.

Section 4-38. Animals in motor vehicles.

(a) No operator of a motor vehicle shall transport or keep an animal in or on any motor vehicle unless the animal is safely enclosed within the vehicle or protected by a container, cage, cross tethering, or other device that will prevent the animal from falling from, being thrown from, or jumping from the motor vehicle.

(b) It shall be unlawful for a motor vehicle owner or operator to place or confine an animal or allow it to be placed or confined or to remain in an un-attended motor vehicle without sufficient ventilation or under conditions for such a period of time as may reasonably be expected to endanger the health or well-being of such animal due to heat, lack of water, or such other circumstances as may reasonably be expected to cause suffering, disability or death of the animal.

(c) Officers finding an animal under the conditions referenced above may rescue such animal from the vehicle following the policy established by animal control.

(d) Any officer who acts in substantial compliance with the requirements of this section shall make the officer and/or the county immune from any criminal or civil liability.

Section 4-39. Exploitation of animals prohibited.

It is unlawful for any person to promote, conduct or permit exploitive animal contests, performances, or exhibitions, in which animals are encouraged, forced, or trained to perform unnaturally, including, but not limited to, greased pig contests, equine basketball, diving equine acts, or roadside zoos or menageries.

Section 4-40. Reserved.

Section 4-41. Procedure upon citation.

- (a) Any person cited for violation of the animal control ordinance (~~Division 1~~) shall be deemed to be charged with a civil infraction and cited to appear in county court.
- (b) Any person cited for an infraction under this section must:
- (1) Sign and accept a citation indicating a promise to appear in county court at the time, date, and place indicated in the citation, or, in lieu of appearing, pay the applicable civil penalty prior to the court date noted on the citation.
 - a. *Exception.* No person to whom a citation has been issued which requires a mandatory court appearance may pay the civil penalty in lieu of appearing in county court.
- (c) Any person who willfully refuses to accept and sign the citation shall be in violation of state law and this article and shall be punished in accordance with F.S. §§ 775.082, 775.083, or 775.084, as provided by F.S. ch. 828.
- (d) If the person cited pays the applicable civil penalty in lieu of appearing in county court, he or she shall be deemed to have admitted the infraction and to have waived his or her right to a hearing on the issue of commission of the infraction.
- (e) Any person electing to appear or who is required so to appear shall be deemed to have waived his or her right to pay the minimum civil penalty.

Section 4-42. Fees.

The Board of County Commissioners of Leon County, Florida, may, by resolution, establish and subsequently amend a fee schedule for the division of animal control which shall be administered by the division. All fees collected under this section that are not expended in the

current fiscal year, shall be carried over to the succeeding fiscal year for expenditure in the division of animal control.

Sections 4-43 – 4-60. Reserved.

DIVISION 2. IMPOUNDMENT, REDEMPTION, ETC.

Section 4-61. Authority of county.

The director of animal control or any animal control officer shall pick-up, catch or confine any animal in violation of this article.

Section 4-62. Restraint by property owner.

A property owner or tenant may restrain in a humane manner any animal found in violation of this article on his or her property. When such restraint is made, the property owner or tenant shall immediately notify the division of animal control. The property owner or tenant shall treat the animal humanely and shall exercise due care to ensure the animal's safety and well-being. The director of animal control or any animal control officer may impound any animal delivered by its owner, or may pick up and impound any animal restrained by a property owner as described above, and shall dispose of the animal pursuant to this article.

Section 4-63. Redemption.

Stray animals which are impounded and are not suffering from or suspected of having an infectious disease, shall be held for not less than five business consecutive days excluding day of impoundment, unless sooner redeemed by the owner. Animals that are ill or injured animals may be euthanized prior to the expiration of the five-day holding period in accordance with F.S. § 828.05. In instances when the owner of an impounded animal can be determined the director of animal control or any animal control officer shall make a reasonable attempt to contact the

owner before the disposition of the animal. A reasonable attempt to contact the owner shall be satisfied by a telephone call to the telephone number provided by the owner on two separate days and times, and should the telephone method fail, by placing a notice in a conspicuous place on the owner's premises.

Section 4-64. Disposal of animals.

(a) Feral or unweaned animals may be euthanized immediately upon impoundment. Other animals not claimed at the end of the fifth business day or after the quarantine period and animals impounded pursuant to section 4-77 shall become the property of the county.

(b) Before any animal may be adopted from the animal shelter, provision shall be made for such animal to be neutered with the following exceptions:

- (1) A dog or cat claimed by the owner before the end of the fifth business day or at the end of the quarantine period shall not be required to be neutered before its release to the owner.
- (2) If the dog or cat is under the age of six months, provisions shall be made to have it neutered at the age of six months.
- (3) Upon the request of a licensed veterinarian, and for a valid medical reason, such as the relative immaturity of a particular animal or breed at the required age of sterilization or the presence of a medical problem or condition in a particular animal which makes surgery at the time inadvisable, the director of animal control shall extend the time limits within which the animal must be sterilized.

(c) No animal from the unincorporated area of the county which has been classified as dangerous, or which has been involved in an unprovoked bite or attack on a person or domestic animal, shall be placed for adoption from the animal shelter if the owner does not redeem the animal. An animal involved in a bite or attack on a person or domestic animal shall be placed for adoption into the unincorporated area of the county only with prior approval of the director of animal control, to be determined on a case-by-case basis.

(d) Any animal not redeemed by its owner or adopted as a personal pet shall be humanely euthanized.

Section 4-65. Fees.

Impoundment and board fees for animals under this division shall be as follows:

- (1) Impoundment, \$30.00.
- (2) Boarding fees, for each day the animal is impounded or partial day thereof, shall be established by a resolution of the board.

Sections 4-66—4-75. Reserved.

DIVISION 3. RABIES CONTROL

Section 4-76. Rabies vaccination required.

(a) *Frequency; exception.* Every ferret, dog and cat four months of age or older shall be vaccinated against rabies with a U.S. government-approved vaccine. Each animal shall be required to be vaccinated no more frequently than the effective period of the approved vaccine used. Such vaccination is excused only if a licensed veterinarian certifies in writing that a vaccination would be injurious to the ferret's, dog's or cat's health. In such case, the ferret, dog

or cat shall be confined in an enclosed building or kennel until the ferret, dog or cat can be safely vaccinated.

(b) *Proof of vaccination; tags.* Proof of vaccination shall consist of a rabies vaccination certificate signed by the licensed veterinarian administering the vaccination and a rabies vaccination tag. The rabies vaccination tag shall be displayed ~~about~~ around the ferret's, dog's or cat's neck at all times. A rabies vaccination certificate and a rabies vaccination tag issued for one ferret, dog or cat shall be not valid for any other ferret, dog or cat. Rabies vaccinations by a licensed veterinarian outside of the county shall be recognized as current rabies vaccinations in the county throughout the duration of the vaccine used.

(c) *Removal of tag.* It is unlawful for any person to remove the rabies vaccination tag of any currently vaccinated ferret, dog or cat unless:

- (1) The ferret, dog or cat is participating in any organized exhibition or field trial, or is training for these events, or is engaged in a legal sport under competent supervision; or
- (2) A licensed veterinarian directs in writing that the rabies vaccination tag be removed for reasons of the ferret's, dog's or cat's health. In such event, the ferret, dog or cat shall be confined until the veterinarian permits the tag again to be placed on the ferret, dog or cat; or
- (3) The animal is securely confined.

(d) *Display of proof.* It is unlawful for the owner of a ferret, dog or cat to refuse to show proof of current vaccination of such ferret, dog or cat by the end of the next business day if

such information is requested by the director of animal control, any animal control officer or the HRS Department of Health-Leon County public health unit.

(e) *Rabies information to go to county.* Any veterinarian administering a rabies vaccination to a ferret, dog or cat within the county shall furnish the information contained therein to the division of animal control or to the HRS Department of Health-Leon County public health unit upon request.

Section 4-77. Animal bites.

(a) When any animal bites or wounds a human or when a human or domestic or captive wild animal is bitten by or exposed to rabies by a suspected or known rabid animal, the owner shall comply fully with F.A.C. ch. 10D-3, "Communicable Disease Control." Chapter 64D-3, ("Control of Communicable Diseases & Conditions which May Significantly Affect Public Health"), Florida Administrative Code.

(b) It shall be the duty of any person having knowledge that an animal has bitten or otherwise exposed a person or domestic or captive wild animal to rabies, to report the incident immediately to the division of animal control or to the HRS- Department of Health-Leon County public health unit for examination, or for supervised quarantine of the animal at the expense of the owner.

(c) Any ferret, cat or dog which has bitten or exposed a human to rabies shall be quarantined for a period of not less than ten days from the date of exposure.

(d) The procedures for the investigation of animal bites inflicted by animals other than ferrets, dogs and cats shall be followed in accordance with the provisions set forth in Chapter 64D-3, F.A.C. ch. 10D-3.

(e) The location and conditions of examination or quarantine of animals which have bitten or otherwise exposed a person to rabies shall be established by the county health officer, (Chapter 64D-3, F.A.C. ch. 10D-3).

(f) It shall be unlawful for any person to hide, conceal, or refuse to surrender any animal for examination or quarantine upon lawful demand to do so by the division of animal control or the HRS Department of Health-Leon County public health unit.

(g) Any person having knowledge that a domestic animal has been bitten by or otherwise exposed to rabies by a wild animal of a species commonly recognized to be a carrier of rabies, such as, but not limited to, raccoons, foxes, skunks, bats, and bobcats, shall immediately report such bite or exposure to the division of animal control or to the HRS Department of Health-Leon County public health unit for the investigation of such bite or exposure.

Section 4-78. Potential rabies carriers.

No person shall keep, own, possess, or harbor any potential rabies carriers as defined in this article as a personal pet within the county. Owners of potential rabies carriers obtained prior to June 1, 1988 shall be allowed to keep, own, possess, or harbor the animal, provided that they are properly permitted through state or federal agencies, and further provided that the animal was not obtained from the wild. Adequate living quarters and confinement must be provided for the animal which are consistent with the species' normal requirements for size, shelter, exercise area, heat, ventilation, light, and safety. All areas for the animal must be maintained in a sanitary manner. Owners of animals which were obtained prior to June 1, 1988 shall not replace a wild animal with another prohibited potential rabies carrier if the animal owned prior to June 1, 1988 becomes lost, is stolen, is given away, or dies. The prohibition on the ownership of potential

rabies carriers shall not apply to property licensed or permitted museums, wildlife rehabilitators, zoological parks, or research facilities. It shall be the responsibility of the owner of any potential rabies carrier animal to provide proof of the acquisition date and the animal's source if requested to do so by the division of animal control.

Sections 4-79—4.90. Reserved.

DIVISION 4. DANGEROUS AND AGGRESSIVE ANIMALS

Section 4.91. Disposition generally.

(a) *Aggressive classification.* Any animal classified as aggressive according to the definitions in this article shall be, at the time of being so classified, confined permanently to the owner's premises.

(b) *Dangerous classification.* Any animal classified as dangerous ~~or aggressive~~ according to the definitions in this article shall be, at the time of being so classified, either confined permanently to the owner's premises, or humanely destroyed.

Section 4-92. Exception to classification.

(a) No animal shall be classified as dangerous or aggressive because of injuries it has inflicted upon another domestic animal which at the time was teasing, tormenting, abusing, or assaulting the animal.

(b) No animal shall be classified as dangerous if the threat of injury was sustained by a person who, at the time, was committing or attempting to commit a tort or a crime upon the owner of the animal or who was committing a willful trespass upon the premises occupied by the owner of the animal, or who was teasing, tormenting, assaulting or abusing the animal or its owner.

Section 4-93. Petition for classification--Generally.

(a) The division of animal control or any adult person may request under oath that an animal be classified as dangerous or aggressive as defined in this article by submitting a "petition for classification of a dangerous or aggressive animal," hereinafter called the "petition," to the division of animal control.

(b) Upon receipt of a petition, the director of animal control shall notify the owner of the animal that a petition has been filed with the division, and that an investigation in the allegations as set forth in the petition will be conducted.

(c) Initial determination of classification. Upon completion of the investigation, a ~~classification committee, consisting of a local veterinarian, the sheriff or his or her designee, and an informed citizen appointed by the board,~~ the director of Animal Control or his/her designee shall make an *initial* determination as to whether there is sufficient cause to classify ~~the dog~~ an animal as dangerous or aggressive and shall afford the owner an opportunity for a hearing prior to making a final determination.

(1) The animal control director ~~authority~~ shall provide written notification of the sufficient cause finding to the owner, by registered mail, certified hand delivery, or service in conformance with the provisions of F.S. ch. 48, relating to service of process.

(2) The animal initially predetermined to be dangerous or aggressive shall be impounded by the county at the owner's expense, pending the disposition of the hearing and/or compliance with harboring a dangerous or aggressive animal.

(3) Any animal that continues to violate the county ordinance while under a dangerous or aggressive animal investigation may be impounded pending the animal control director's ~~classification committee's~~ *initial* determination at the owner's expense.

(d) Owner's Right to Contest the Initial Determination of Classification and Final Determination by the Animal Classification Committee. Upon receiving written notification of the animal control director's initial determination of classification, the owner may contest the initial determination by filing a written request to the animal control division for a hearing within seven (7) calendar days from the date of receipt of the notification of the initial determination sufficient cause finding. Otherwise, the animal control director's initial determination shall become final. Such hearing shall be convened by the Leon County Animal Classification Committee. The Leon County Animal Classification Committee shall consist of a licensed veterinarian, the Leon County Sheriff or his/her designee, and an informed citizen appointed by the Leon County Board of County Commissioners.

(1) and, if requested, the Final Determination hearing shall be held as soon as possible, but not more than 21 calendar days and no sooner than five (5) days after receipt of the request from the owner.

(2) If the animal classification committee finds sufficient cause to classify the animal dangerous or aggressive the classification committee shall determine the classification and disposition of the animal based upon the guidelines adopted by the Board.

(3) In hearings before the animal classification committee, formal rules of evidence shall not apply, but fundamental due process shall be observed and govern the proceedings.

The classification committee shall decide the issues based upon the preponderance of the evidence, and its decision shall be final.

(4) Where a disposition of permanent confinement has been determined by the animal classification committee, the committee shall reserve jurisdiction to alter the disposition should the classified animal, subsequent to the determination by the committee, bite, wound, attack or kill or assist in biting, wounding, attacking, or killing a person or domestic animal. Thereafter, the director of animal control shall notify the animal's owner and the petitioner in writing by registered mail or certified hand delivery of the findings of the investigation, the proposed disposition of the animal and the review process.

(d)(e) Request for Continuance. If the owner, ~~or~~ keeper or Petitioner cannot appear at any hearing scheduled by the animal classification committee, he or she shall contact the division of animal control no later than 48 24 hours prior to the hearing, requesting a continuance to the next available date.

(f) Waiver. If the owner, ~~or~~ keeper or Petitioner fails to appear at the rescheduled classification hearing, the owner, ~~or~~ keeper or Petitioner of such animal shall be deemed to have waived his or her right to appear at such hearing. In such case, the division of animal control shall proceed with the hearing and shall notify the owner, ~~or~~ keeper or Petitioner in writing of the findings of the committee.

Section 4-94. Same—Owner's right to contest final determination in the county court.

(a) If the owner or keeper of an animal classified as dangerous or aggressive disputes the Final Disposition order of the animal classification committee, he or she may file a

Complaint seeking relief in the County Court, within ten (10) business days following the date of receipt of the animal classification committee's Final Disposition order apply to a court of competent jurisdiction for any remedies which may be available.

(b) The Complaint shall be served upon the Chairman of the Leon County Board of County Commissioners in accordance with Chapter 48, Florida Statutes. A copy of the Complaint action seeking relief shall be served upon the eCounty Attorney's Office.

(c) The Complaint shall comply with the standards and requirements set forth in the Florida Rules of Civil Procedures for bringing causes of actions.

(d) Burden of Persuasion. A Complaint to contest the Final Disposition order of the animal classification committee shall be held by trial de novo in the county court. The party bringing the Complaint shall have the initial burden of going forward with the evidence at trial.

(e) If the owner or keeper of the animal is unable to or fails to or refuses to confine the animal in a securely enclosed area, complying with section 4-100, until the conclusion of the judicial proceeding, the animal classified as dangerous or aggressive shall be impounded by the division of animal control at the owner's expense pending the disposition of the hearing in accordance with the rules and regulations established by the board.

(b) (f) If no legal action has been served upon the county within the time period specified above, or if the owner or keeper fails to appear at the judicial proceeding scheduled pursuant to the foregoing subpart, the owner or keeper of such animal shall be deemed to have waived his or her right to protest such classification or order to permanently confine or to destroy the animal. In such case, the division of animal control shall proceed with the disposition of the animal.

(e)(g) If the county court ~~a court of competent jurisdiction~~ finds that the animal is not dangerous or aggressive as defined in this chapter, the animal shall be released to the custody of the owner or keeper. In such case, the county shall be liable for costs of impoundment of the animal from the date of service of the owner or keeper's legal action of the county until the date of the county court's finding denying the classification.

Section 4-95. Citation.

An animal control officer shall issue a citation to any owner or keeper of a dangerous or aggressive animal found in violation of any of the provisions of this article. In addition to the issuance of a citation, an animal control officer may impound the animal when it is found in violation of any of the provisions of this article.

Section 4-96. Impoundment; permit and tag required for dangerous or aggressive animals.

(a) An animal control officer shall impound any animal which, subsequent to its classification as a dangerous or aggressive animal, bites, wounds, attacks or kills, or assists in biting, wounding, attacking, or killing, any person or domestic animal. Such animal shall remain impounded pending a rehearing on the determination of the disposition of the animal by the classification committee pursuant to section 4-94. The impoundment and care of the animal shall be at the owner's expense.

(b) The owner or keeper of a dangerous or aggressive animal shall, within 14 days of the classification of the animal as dangerous or aggressive, upon a court's upholding of the classification or upon the acquisition of such an animal, obtain a permit from the division of

animal control to harbor the animal. No permit shall be issued until sections 4-100, 4-101, 4-102, 4-103 have been completed. The fee for the permit shall be ~~\$50.00~~ 100.00.

(c) At the time the permit is issued, a red circular tag shall be issued to the owner or keeper of the dangerous or aggressive animal. Such tag shall be worn at all times by the animal to clearly and easily identify it as a dangerous or aggressive animal.

(d) The permit for maintaining a dangerous or aggressive animal shall be presented to any animal control officer or to any law enforcement officer upon demand.

(e) The permit shall be valid for a period of one year from the date of classification.

(f) An animal control officer shall impound any animal that has not been declared dangerous or aggressive under this section that aggressively attacks and causes severe injury to or death of any human. Such animal shall remain impounded pending a hearing on the determination and of the disposition of the animal by the classification committee pursuant to sections 4-93 and 4-94. The impoundment and care of the animal shall be at the owner's expense.

Section 4-97. Notification of change of status.

(a) The owner or keeper of a dangerous or aggressive animal shall notify the division of animal control immediately if the animal escapes from its enclosure or restraint and is at large, or if it bites or attacks a person or domestic animal, or if it dies. If the animal dies, satisfactory proof of such death must be provided to the division of animal control within 24 hours.

Satisfactory proof shall be either verification from an animal shelter or veterinary hospital that the animal was euthanized, or verification from an animal control officer that he or she has seen the dead body of the animal.

(b) If the owner or keeper of a dangerous or aggressive animal intends to change his or her address, or sell, give away, or trade any dangerous or aggressive animal, he or she shall notify the division of animal control prior to such change of address, sale, transfer, or trade. The owner or keeper shall provide the division of animal control with the new name, address, and phone number of the person receiving the animal, as well as the location at which the animal will be maintained. Further, it shall be the responsibility of the owner to notify the person receiving the dangerous or aggressive animal in writing of the classification of the animal as dangerous or aggressive.

(c) Any person receiving an animal classified as dangerous or aggressive must obtain the required permit, tag, and enclosure prior to the acquisition of the animal. Any person obtaining an animal classified as dangerous or aggressive shall comply fully with the provisions of this article pertaining to the maintenance, control, and ownership of a dangerous or aggressive animal.

Section 4-98. Neutering.

Any animal classified as dangerous or aggressive shall not be used for breeding. Animals classified as dangerous shall be neutered by a licensed veterinarian within 30 days of such classification unless:

- (1) A licensed veterinarian certifies in writing that the animal is incapable of reproduction; or
- (2) A licensed veterinarian certifies in writing that neutering the animal would be injurious to the animal's health, provided, however, that if the health condition of the animal is of

a temporary nature, then the animal shall be neutered immediately after the health condition has been corrected.

Section 4-99. Tattoo.

(a) Any animal classified as dangerous or aggressive shall be tattooed by a licensed veterinarian or by a trained tattooist at the expense of the owner or keeper of such animal. The tattoo shall be placed on the inside rear thigh with a number corresponding to the number of the permit issued to the owner or keeper at the time of the animal's classification as dangerous or aggressive.

(b) The tattoo shall be placed on the animal within 30 days of such classification.

Section 4-100. Enclosure required.

(a) All dangerous or aggressive animals that are not humanely destroyed shall be confined in an enclosure. As used in this section, "enclosure" shall mean either the residence or other building owned or leased by the animal's owner, or any other secure enclosure which the division of animal control has approved as suitable for restraining the animal and for preventing it from escaping. The enclosure shall have secure sides and a secure top and bottom to prevent the animal from escaping over, under, or through the structure. The enclosure shall be kept locked at all times to prevent unintentional opening of the enclosure. The dangerous or aggressive animal shall not be permitted to come into contact with animals other than those which reside on the owner's premises. Dangerous animals shall not come into contact with persons other than the owner(s) except as provided in section 4-102.

(b) It shall be unlawful for any owner or keeper of a dangerous or aggressive animal to maintain said animal upon any premises which does not have an enclosure in which to confine the animal.

(c) The enclosure shall include suitable shelter and protection from the elements, and shall provide adequate exercise room, light, ventilation, and sanitation.

(d) The enclosure shall be approved by the division of animal control prior to its usage for confinement.

Section 4-101. Muzzle.

It shall be unlawful for any owner or keeper to allow any dangerous or aggressive animal to be outside of the enclosure unless it is necessary for the animal to receive veterinary care or exercise. The animal shall wear a properly fitted muzzle to prevent it from biting humans or other animals. Such muzzle shall not interfere with the animal's breathing.

However, it shall be lawful for an owner to exercise a dangerous or aggressive animal within a securely fenced or enclosed area that does not have a top, without a muzzle, if the animal remains within the owner's sight and only members of his or her immediate household, or persons 18 years of age or older, are allowed in the enclosure when the animal is present.

Section 4-102. Restraint.

Whenever the dangerous or aggressive animal is outside of the enclosure, it shall be restrained by an adult capable of controlling the animal and shall be on a chain of sufficient tensile strength not more than ~~three~~ four feet in length.

However, it shall be lawful for an owner to exercise a dangerous or aggressive animal within a securely fenced or enclosed area that does not have a top, without a leash, if the animal

remains within the owner's sight and only members of his or her immediate household, or persons 18 years of age or older, are allowed in the enclosure when the animal is present. When being transported, such animals must be safely and securely restrained within a vehicle.

Section 4-103. Signs.

The owner or keeper of a dangerous or aggressive animal shall display clearly visible warning signs on all entry points to the premises on which a dangerous or aggressive animal is maintained warning that a dangerous or aggressive animal is being harbored on such property. In addition, at least one sign shall be posted on the enclosure in which the dangerous animal is maintained. Signs must inform both children and adults of the presence of a dangerous or aggressive animal on the property.

Section 4-104. Public records exemption.

Pursuant to state law, the home addresses and home telephone numbers of county animal control officers are confidential and exempt from the provisions of F.S. § 119.07(1) and the Florida Constitution, Article I, Section 24(a).

Section 4-105. Retroactivity.

All appeals of determinations of classification and/or disposition on or after October 1, 1993, shall be subject to sections 4-93 and 4-94.

Section 4-106—4-200. Reserved.

SECTION II. Conflicts. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, except to the extent of any conflicts with the Tallahassee-Leon County 2010 Comprehensive Plan as amended,

which provisions shall prevail over any parts of this ordinance which are inconsistent, either in whole or in part, with the said Comprehensive Plan.

SECTION III. Severability. If any word, phrase, clause, section or portion of this Ordinance shall be held invalid or unconstitutional by a court of competent jurisdiction, such portion or words shall be deemed a separate and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION IV. Effective date. This Ordinance shall have effect upon becoming law.

DULY PASSED AND ADOPTED BY the Board of County Commissioners of Leon County, Florida this _____ day of _____, 2005.

LEON COUNTY, FLORIDA

BY: _____
Cliff Thael, Chairman
Board of County Commissioners

ATTESTED BY:
BOB INZER
CLERK OF THE COURT

BY: _____
Clerk

APPROVED AS TO FORM:
COUNTY ATTORNEY'S OFFICE
LEON COUNTY, FLORIDA

BY: _____
Herbert W.A. Thiele, Esq.
County Attorney

Board of County Commissioners Agenda Request

Date of Meeting: June 8, 2004
Date Submitted: June 2, 2004

To: Honorable Chairman and Members of the Board

From: Herbert W.A. Thiele, Esq. 
County Attorney

Subject: Approval of Agreement and Release of Liability Granting
Permanent Custody to Home For Life, Inc., for the care of the dog
known as "Sailor"

Statement of Issue:

This item seeks the Board's approval of an Agreement and Release of Liability which would grant full and permanent custody of the dog known as "Sailor" to Home For Life, Inc., an animal sanctuary (Attachment #1).

Background:

In December, 2003, Carol Shirkey filed a Dangerous Dog Petition requesting to have the dog known as "Sailor" be declared a "dangerous" animal (Attachment #2). According to the Petition, Mrs. Shirkey's ten year old daughter, Emily was severely injured by Sailor, a border collie. Emily was treated for the injuries and received thirty (30) stitches to her right rear thigh at the Tallahassee Memorial Hospital. Thereafter, Leon County Animal Control conducted a thorough investigation of the attack and received complaints from several neighbors regarding Sailor (Attachment #3). Primarily, the neighbors complained of the dog "being neglected by the owner, kept outside in freezing weather, barking and running at joggers and walkers, he is constantly tied to chain, kids tease the dog and throw sticks at it, and the dog has been observed fighting area wildlife." While the residents in the neighborhood are afraid for their safety, they also expressed concern for the dog's well-being. At the time of the incident, the owner of the dog, Murray Sharkey, allowed the dog to remain chained to a "make-shift" shelter on a vacant lot.

After conducting its investigation, Animal Control presented the case to the Leon County Animal Control Classification Committee (Committee) for review. During a publicly-noticed "pre-determination" hearing on January 30, 2004, and after reviewing the investigative report, the Committee voted to classify Sailor as a "dangerous" dog and ordered the final disposition of "permanent confinement" (Attachment #4). Animal Control notified Murray Sharkey of the pre-determination decision and his opportunity to attend the Final Determination hearing scheduled for February 26, 2004. The Committee entered the "dangerous" classification at the duly noticed public hearing on February 26, 2004 and further ordered the Final Disposition of Permanent Confinement (Attachment #5).

Leon County Animal Control consistently notified Murray Sharkey of the time set for public hearings and that his dog, "Sailor" had been declared "dangerous". However, Mr. Sharkey never responded to such notices, nor did he attend any of the duly noticed public hearings to speak or protest the classification until Leon County notified him that his dog would be euthanized. In response, Mr. Sharkey filed an appeal in the county court to contest the "dangerous dog" classification (Attachment #6). The County Attorney's office, filed a Motion to dismiss asserting that the appeal was untimely (Attachment #7). After a hearing on the matter, County Court Judge Augustus Aikens granted the Motion and dismissed the appeal on April 27, 2004 (Attachment #8).

Mr. Sharkey had thirty (30) days to appeal the Judge's ruling to the Circuit Court on or before May 26, 2004. To date, Mr. Sharkey has not complied with the County's requirements for Permanent Confinement and has not filed an appeal. Therefore, Mr. Sharkey has "abandoned" Sailor. While this case has been pending, Sailor has been held at the City of Tallahassee/Leon County Animal Shelter since January of this year. Lisa Laverdiere of Home For Life, Inc., in the State of Wisconsin has volunteered to take full and permanent custody of Sailor to prevent euthanasia of the animal.

Analysis:

Section 4-91 of the Leon County Code of Laws, prohibits the adoption of any animal that has been classified as a dangerous animal. The policy behind this law serves to protect the County from liability suits should the animal attack someone in the future. Accordingly, Animal Control is required to euthanize Sailor, since he was abandoned by his owner. However, Home For Life, Inc. has volunteered to take full and permanent possession of Sailor. Home For Life, Inc. is a non-profit organization whose primary mission is to take in unadoptable animals, caring for them in an animal sanctuary for life. Lisa Laverdiere, as Chief Executive Officer of the organization, has executed the attached Agreement and Release of Liability and is waiting on the Board's approval so she can travel to Florida to take possession of the dog. The Agreement and Release of Liability serves some critically important goals, such as helping protect the County from liability suits and requiring Home For Life, Inc. to comply with the County's requirements for permanent confinement.

Options:

1. Approve the Agreement and Release of Liability granting full and permanent custody of the dog known as "Sailor" to Home For Life, Inc., an animal sanctuary.
2. Do not approve the Agreement and Release of Liability.
3. Board direction.

Recommendation:

Option # 1.

Attachments:

1. Agreement & Release of Liability
2. Dangerous Dog Petition
3. Investigation & Incident Report
4. Animal Petition Review
5. Final Determination
6. Notice of Appeal
7. Motion to Dismiss
8. Order of Dismissal

HWAT/CAS/cc

AGREEMENT AND
RELEASE OF LIABILITY

This Agreement is made and entered into this _____ day of _____, 2004, by and between LEON COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, hereinafter referred to as the "County," and HOME FOR LIFE, a non-profit corporation, located at 375 Highway 65, Star Prairie, Wisconsin, 54001, hereinafter referred to as the "Corporation."

WHEREAS, on February 26, 2004, the Leon County Animal Classification Committee classified the dog known as "Sailor" as a "dangerous" dog and ordered the disposition of "permanent confinement"; and

WHEREAS, the dog's owner, Murray Sharkey, contested the "dangerous" classification in County Court, and the said classification remains unchanged after the County Court dismissed the action on April 27, 2004; and

WHEREAS, Murray Sharkey has failed to comply with the requirements of the *Leon County Code of Laws* for permanent confinement, and further has abandoned the dog known as "Sailor"; and

WHEREAS, once a dog has been declared "dangerous" by the Leon County Animal Classification Committee, said dog is unadoptable pursuant to Section 4-91 of the *Leon County Code of Laws* and will be euthanized if not claimed by the owner who is required to comply with the County's requirements for permanent confinement; and

WHEREAS, the Corporation, which is a non-profit corporation, located in Stillwater, Minnesota, operates a sanctuary for animals who are unadoptable and has volunteered to care for "Sailor" during the entirety of his life;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises hereinafter set forth; the parties do hereby agree as follows:

1. The Corporation shall permanently confine Sailor in a secure enclosure as set forth in Section 4-100 of the *Leon County Code of Laws*.
2. Prior to taking physical possession of Sailor, the Corporation agrees to the following:
 - a. to obtain a permit from the Leon County Division of Animal Control to harbor Sailor.
 - b. to affix upon Sailor the tag which will accompany the permit, this tag shall be worn by Sailor at all times.
 - c. to apply the terms of Section 4-99 of the *Leon County Code of Laws* to Sailor, which requires the tattooing of the permit number upon the inner rear thigh of Sailor.
 - d. to have Sailor neutered by a licensed veterinarian
3. The Corporation agrees that anytime Sailor is outside of the secure enclosure he must be leashed and muzzled, and the muzzle shall be properly fitted so to prevent Sailor from biting humans or other animals.
4. The Corporation agrees to provide permanent medical care, food, shelter and overall companionship to Sailor for the entirety of his life.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed on this 28th day of MAY, 2004.

LEON COUNTY, FLORIDA

By: _____
Jane G. Sauls, Chairman
Board of County Commissioners

HOME FOR LIFE, INC.
By: [Signature]
Lisa Laverdiere, Esq.
Chief Executive Officer

ATTESTED BY:
BOB INZER, CLERK OF THE COURT

By: _____

ATTESTED BY:

By: _____
Secretary of the Corporation

APPROVED AS TO FORM:
COUNTY ATTORNEY'S OFFICE
LEON COUNTY, FLORIDA

By: _____
Herbert W.A. Thiele, Esq.
County Attorney

GENERAL RELEASE OF LIABILITY

HOME FOR LIFE, INC., as the "Corporation," acknowledges that it has voluntarily applied to take full and permanent possession of Sailor, a dangerous dog. The Corporation is aware that Sailor was declared "dangerous" because he severely injured a small child without provocation. The Corporation, therefore, voluntarily takes possession of Sailor with the knowledge of the potential danger involved and the Corporation assumes any and all risks of injury, death, or property damage.

The Corporation, for and in consideration of the privilege and benefits to be derived from the right to take full and permanent possession of Sailor, does hereby release and forever discharge, absolve, and hold harmless Leon County, Florida, its officers, agents and employees from any and all liability, claim, or action that the Corporation or its officers, agents, employees, successors, heirs, assigns, administrators, or executors, may ever have resulting directly or indirectly or remotely from any injury, death or property damage occurring as a result of the Corporation taking possession of Sailor, a dangerous dog.

The Corporation further agrees to indemnify and hold harmless Leon County, Florida, its officers, agents, and employees, from and against any and all claims, liabilities, damages, or suits of any nature whatsoever arising out of, because of, or due to the Corporation taking possession of Sailor, a dangerous dog, including but not limited to costs and a reasonable attorney's fee. In suits, claims or causes of action brought against Leon County, Florida, the County may, at its sole option, defend itself or allow another to provide the defense, and the Corporation agrees to reimburse Leon County for any expenses related thereto.

The Corporation further states and affirms that it has personally read and understands this document, and that the Corporation has not relied upon any statements, promises, or advice of

any employees or agents of Leon County, and that the Corporation understands that it has the right to have an attorney review same and does hereby voluntarily affix its signature hereto this

28TH day of MAY, 2004.

HOME FOR LIFE, INC.

By: _____

Lisa Laverdiere, Esq.
Chief Executive Officer

ATTESTED BY:

Secretary of the Corporation

STATE OF WIS

COUNTY OF ST CROIX

The foregoing instrument was acknowledged before me this 28TH day of MAY

_____, 2004, by Lisa Laverdiere, Esq., Chief Executive Officer, and

_____, as Secretary of the Corporation, a _____ (enter

State) corporation, on behalf of the corporation.

Personally known to me _____

OR Produced Identification ☒

Type of Identification Produced MINNESOTA DRIVER'S L

Gary D. Brecht
Notary Public -- Signature

GARY D. BRECHT
Print, Type or Stamp Name of Notary
NOTARY PUBLIC, STATE OF WISCONSIN

My Commission Expires: 6/09/06

RECEIVED

IN THE COUNTY COURT, IN AND FOR
LEON COUNTY, FLORIDA

PATRICIA ORTEGA, 02 SEP -6 PM 4: 13

Plaintiff/Appellant, LEON COUNTY
ATTORNEY'S OFFICE
v.

CASE NO.: 2002 CC 001980

LEON COUNTY, FLORIDA; DEPARTMENT
OF PUBLIC WORKS/ANIMAL CONTROL
DIVISION; LEON COUNTY ANIMAL
CONTROL CLASSIFICATION COMMITTEE;
SALLY HAMMER; MARION HAMMER,

FILED 8-30-02
Bob Inzer
Clerk of County Court
Civil Division

Defendants/Appellees.

ORDER

Plaintiff, Patricia Ortega is the owner of two Labrador retrievers, Angel and Buster. On March 1, 2002, both of the dogs were classified as "dangerous" by the Leon County Animal Control Classification Committee. As a result of the classification the dogs were required to be permanently confined as defined by ordinance. Plaintiff seeks to contest the action taken by the Committee. On March 14, 2002, Plaintiff filed a Request for Hearing and Notice of Appeal with the Clerk of the County Court for Leon County with a copy served on the County Attorney.

On May 7, 2002, a hearing was held before this Court. At issue in that May hearing were a) what remedy is provided by statute or ordinance to Plaintiff to contest the Committee's action; b) is the remedy provided by statute or ordinance sufficient to satisfy constitutional requirements of due process of law; and c) did the Plaintiff timely take the action necessary to protect her rights under the remedy provided. A related question raised by the pleadings and at the hearing is the standing of Sally and Marion Hammer as private citizens to be parties to these proceedings.



I. WHAT REMEDY IS AVAILABLE

Several assumptions appeared clear at the hearing and were not subject to serious debate. First, the Animal Control Classification Committee's decision to declare the dogs "dangerous" and then the Committee's decision to order that the dogs be permanently confined is a governmental action that has deprived the Plaintiff of a valuable property interest. Second, the Plaintiff has a constitutional right to due process of law before such rights are taken or abridged by government. Finally, the Florida legislature and the Leon County Commission have attempted by statute and ordinance to provide a sufficient remedy to a dog owner who is not satisfied with the decision of the Committee. This Court must interpret what that remedy is and determine if Plaintiff properly and timely requested that her objections be addressed. Florida Statute 767.12(1)(d) states in material part:

(d) Once a dog is classified as a dangerous dog, the Animal Control Authority shall provide written notification to the owner by registered mail, certified hand delivery or service, and the owner may file a written request for a hearing in the county court to appeal the classification within 10 business days after receipt of a written determination of dangerous dog classification and must confine the dog in a securely fenced or enclosed area pending a resolution of the appeal. Each applicable local governing authority must establish appeal procedures that conform to this paragraph.

Leon County Ordinance 4-94(a) states in material part:

(a) If the owner or keeper of an animal classified as dangerous or aggressive disputes the order of the classification committee, he or she may within ten business days following the date of receipt of the order apply to a court of competent jurisdiction for any remedies which may be available.

The County Commission, perhaps anticipating the confusion to come from the inartfully drafted legislation, leaves up to the dog owner the choice of remedies available and the selection of the court to rule on the remedy chosen. The legislature, however, plainly states that the dog owner's recourse lies first within the County Court. The legislature's direction to County Court would be logical except that F.S. 767.12(1)(d) makes repeated references to an appeal and appellate procedure. The County Court does not have appellate jurisdiction and the statute does not explicitly confer appellate jurisdiction on the County Court. *Leon County v. Difalco*, Case No. 93-2837 (CO).

The steadfast rules of judicial statutory interpretation are that whenever possible a Court should interpret a statute so that its effect is constitutional and the Court should interpret a statute to give credence to legislative intent. Adhering to these two rules of interpretation, this Court finds first that the legislature intends for the remedy to the dog owner to be in County Court. This is clear by its directive. Because County Court lacks appellate jurisdiction to review the decision of the Animal Control Committee, this Court must assume and therefore finds that the legislature did not use the word "appeal" in F.S. 767.12 as a term of art but rather as a descriptive term to refer to the hearing to be held. If County Court is the proper forum then for F.S. 767.12 to avoid constitutional infirmity, the hearing in County Court must be a de novo hearing. Therefore, this Court holds that a full evidentiary hearing in County Court must be held to determine if Angel and Buster are "dangerous" as defined by ordinance and statute.

II. IS THE REMEDY PROVIDED ADEQUATE TO MEET CONSTITUTIONAL STANDARDS

By finding that a full evidentiary hearing in County Court is required, the second question is answered in the affirmative. A new hearing with all of the rights of appeal from any decision of

the County Court provides the citizen dog owner with the rights guaranteed by the Florida and United States Constitutions.

**III. DID THE PLAINTIFF TAKE THE ACTIONS
NECESSARY TO SECURE HER RIGHTS TO A TRAIL**

The matter is by statute in County Court. Presumably the cumulative value of the dogs is less than \$5,000.00 meaning that the case is properly in the Small Claims Division of County Court. Small Claims is the "People's Court". Pleadings in Small Claims are less formal and are considered sufficient if they fairly apprise the Defendant of the matter in controversy. The Request for Hearing and Notice of Appeal and the Amended Request for Hearing and Notice of Appeal were timely filed with the Clerk of the County Court and meet the requirements of pleading in County Court even if they were improperly styled.

IV. DO MARION AND SALLY HAMMER HAVE STANDING?

Neither the statute nor the ordinance provide for, or contemplate, the creation of a private cause of action. Private citizens other than the dog owner, may be affected by but are not proper parties to these proceedings contesting governmental action. Neither Sally nor Marion Hammer have an interest that is different from the interest of other members of the general public and therefore they lack standing. Sally Hammer and Marion Hammer are hereby dismissed as parties to this litigation.

DONE AND ORDERED at Tallahassee, Leon County, Florida this 28th day of August, 2002.


JAMES O. SHELPER
COUNTY JUDGE

2002 CC 001980

9-5-07
Copies furnished to:

/ Cynthia A. McNeely, Esq.
Post Office Box 10230
Tallahassee, FL 32302

/ Marion Hammer and Sally Hammer
1507 Avondale Way
Tallahassee, FL 32317

/ Richard H. Zeigler, Director
Animal Control
501-B Appleyard Drive
Tallahassee, FL 32304

✓ Herbert W.A. Thiele, Esq.
Suzanne H. Schmith, Esq.
301 South Monroe Street
Tallahassee, FL 32301

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IN THE COUNTY COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON, COUNTY, FLORIDA

LEONARD J. CLARK
and DEBRA K. CLARK
Petitioners,

LEON COUNTY
ATTORNEY'S OFFICE

Case No.: 2003-4066 CC

vs.

LEON COUNTY FLORIDA,
Respondent.

FILED
COUNTY CIVIL DIV.
03 SEP 26 AM 8:30
BOB INZER
CLERK COUNTY COURT
LEON COUNTY, FLORIDA

ORDER ON COMPLAINT FOR DECLARATORY JUDGMENT

THIS CAUSE came before the Court for a Declaratory Judgment pursuant to Section 86.011, Florida Statutes. The Petitioners are in doubt of their rights, under Leon County Code of Laws, Chapter 4, Section 4-94 and Section 767.12(1)(d), Florida Statutes, to appeal the classification of their dog, "Pete," as an aggressive animal by the Leon County Classification Committee.

Having considered the petition, this Court finds as follows:

FINDINGS OF FACT

1. Petitioners, Leonard J. and Debra K. Clark are Leon County residents and were owners of two dogs, "Sandy" and "Pete" in Leon County, Florida on August 12, 2002.
2. Following an unprovoked attack on two long haired chihuahuas on a public street adjacent to Petitioners' premises at 3981 Elder Lane, Tallahassee, Leon County, Florida, Sandy and Pete were taken into custody by Leon County Animal Control Officers.

3. One of the dogs in the unprovoked attack died from wounds received from Petitioners' dogs.

4. Edward Cerovski, the attacked dogs' owner, petitioned the Leon County Classification Committee to have the dogs classified as dangerous or aggressive as set forth in Leon County Code of Laws, Chapter 4, Section 4-93, Dangerous Animals. The Leon County Code of Laws in Chapter 4 is authorized by and modeled after provisions of Chapter 767, Florida Statutes.

5. On October 10, 2002, the Leon County Classification Committee, after reviewing the evidence and hearing witnesses, found Petitioners' dog "Pete" was an "aggressive" animal.¹

6. As a result of the aggressive animal classification, Pete was ordered to permanent confinement as set forth in the Leon County Code of Laws, Chapter 4, Section 4-91, Dangerous Animals.

7. Petitioners were further advised:

"If the owner or keeper of an animal classified as dangerous or aggressive disputes the order of the classification committee then he or she may within ten business days following the date of the order apply to a court of competent jurisdiction for remedies which may be available."

8. Petitioners timely sought review of the Classification Committee Order in the Circuit Court In and For Leon County, Florida in Case Number 2002-CA-2611.

9. Finding, it was without jurisdiction, the Circuit Court dismissed the case based on the following:

¹ Petitioners voluntarily euthanized their dog Sandy.

Here, a "classification committee" of Leon County's division of animal control determined that Plaintiff's dog was "aggressive." It is important to note that had Plaintiffs' dog been classified as "dangerous", they would have had a statutory right to "appeal" the classification to the county court pursuant to Section 767.12(1)(d), Florida Statutes (2002). Apparently since the "aggressive" classification has far less onerous consequences than a "dangerous" classification, the Legislature did not provide for an appeal to the county court. Although Leon County could have provided for an "appeal" of such determinations to the County Commission, Section 4-94 of the Code does not. The imperfect result is that this Court does not have certiorari jurisdiction over the decision of the classification committee, and the Plaintiffs do not appear to have a remedy under Chapter 767. Therefore, in its current status, the action must be dismissed for lack of jurisdiction; it is therefore
ORDERED AND ADJUDGED that Defendant's motion to dismiss is GRANTED, with prejudice.

10. An "aggressive animal" is defined in the Leon County Code of Laws, Section 4-26 as follows:

"Aggressive animal" shall mean any animal which has injured or killed a domestic animal in a first unprovoked attack while off of the premises of the owner.

11. A "dangerous animal" includes the repeat offender aggressive animal, and those which either bite, chase, attack or menace humans, or is trained for dog fighting.

12. A "dangerous animal" is defined by the Leon County Code of Laws as follows:

"Dangerous animal" shall mean an animal that has, when unprovoked, bitten, attacked, or endangered or has inflicted severe injury on a human being on public or private property; has more than once severely injured or killed a domestic animal while off the owner's property; has, when unprovoked, chased or approached a person upon the

streets, sidewalks, or any public grounds in a menacing fashion, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority; or, in the case of a dog, has been used primarily or in part for the purpose of dog fighting or is a dog trained for dog fighting. (Section 4-26, Leon County Code of Laws)

* * *

"Severe injury" means any physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery. (Section 4-26, Leon County Code of Laws)

13. According to Leon County Code of Laws, an "aggressive animal" could later be classified as an "dangerous animal," but a "dangerous animal" could never meet the definition of an "aggressive animal." For example, a dog which injures a cat in a first unprovoked attack off the owner's premises could be classified as an "aggressive animal." If the animal later injures another animal, in a second attack, then the dog could be classified as a "dangerous animal."

14. Provocation is an absolute defense to classification of an aggressive or dangerous animal. Section 4-92, Leon County Code of Laws.

15. The Classification Committee has the authority to determine punishment of an animal classified as aggressive or dangerous. That punishment could be the same regardless of classification:

Any animal classified as **dangerous or aggressive** according to the definitions in this article shall be, at the time of being so classified, **either** confined permanently to the owner's premises, **or** humanely destroyed. Section 4-91, Leon County Code of Laws. (Emphasis supplied)

16. When permanent confinement is ordered, the Classification Committee reserves jurisdiction to alter the animal's disposition if the animal even assists in the

wounding, biting, attacking another animal or person:

"Where a disposition of permanent confinement has been determined by the classification committee, the committee shall reserve jurisdiction to alter the disposition should the classified animal, subsequent to the determination by the committee, bite, wound, attack, or kill or assist in biting, wounding, attacking, or killing a person or domestic animal. Thereafter, the director of animal control shall notify the animal's owner and the petitioner in writing by registered mail or certified hand delivery of the finding of the investigation, the proposed disposition of the animal and the review process." Section 4-93(c), Leon County Code of Laws.

17. Section 4-94, Leon County Code of Laws details the owner's right to contest the determination of the Classification Committee:

(a) If the owner or keeper of an animal classified as dangerous or aggressive disputes the order of the classification committee, he or she may within ten business days following the date of receipt of the order **apply to a court of competent jurisdiction** for any remedies which may be available. Section 4-94, Leon County Code of Laws. (Emphasis supplied)

18. Leon County Code of Laws do not describe the various courts of competent jurisdiction and the means for determining the competency of each court.

19. Following its determination that dangerous dogs are an "increasingly serious and widespread threat to the public safety and welfare because of unprovoked attacks, the Florida Legislature enacted Chapter 767, Florida Statutes.

20. Leon County Code of Laws closely follows Chapter 767 with some minor changes. "Dangerous dog" is described in Section 767.11(1), Florida Statutes, as any dog according to the records of the appropriate authority to:

(a) have aggressive bitten, attacked, or endangered or has inflicted severe injury on a human being. (Severe injury means "any

physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery. Section 767.1(3), Florida Statutes. In this respect the Leon County Code is identical to the State statutes);

- (b) has more than once severely injured or killed a domestic animal while off the owner's property;
- (c) has been used primarily or in part for the purpose of dog fighting or is trained for dog fighting; and
- (d) one or more persons attest, in an investigation, the animal has, when unprovoked, chased persons on the streets, sidewalks or public grounds in a menacing fashion.

21. Once the animal control authority has made an initial determination of sufficient cause to classify an animal as dangerous, written notification of the sufficient cause finding must be given to the owner along with notification of the right to a hearing. The "animal control authority" is defined in Section 767.11(5), Florida Statutes to include a county.

22. The statute requires each local governing authority to offer a pre-deprivation hearing which conforms with Section 767.12, Florida Statutes. (Section 767.12(1)(c), Florida Statutes)

23. Once classified as a dangerous dog, the animal control authority must advise the owner of their right to appeal the classification to county court:

"Once a dog is classified as a dangerous dog, the animal control authority shall provide written notification to the owner by registered mail, certified hand delivery or service, and the owner may file a written request for a hearing in the county court to appeal the classification within 10 business days after receipt of a written determination of dangerous dog classification and must confine the dog in a securely fenced or enclosed area pending a resolution of the appeal. Each applicable local governing authority must establish appeal procedures that conform to this paragraph. Section 767.12(1)(d), Florida Statutes. (Emphasis supplied)

In this respect, the Leon County Code of Laws deviates from the clearly established appeal process to county courts by choosing to advise litigants to appeal to a "court of competent jurisdiction for remedies which may be available."

24. Once classified as an "aggressive animal" or "dangerous animal," under Leon County's Code, or as a "dangerous" dog under the Section 767.12, Florida Statutes, the dog's owner must obtain a certificate of registration for the dog from the animal control authority serving the area in which he or she resides, and the certificate must be renewed annually. (Section 4-96(b), Leon County Code of Laws and Section 767.12(2), Florida Statutes). Additionally, the owner must immediately notify the appropriate animal control authority when the dog:

- (a) is loose or unconfined;
- (b) has bitten a human being or attacked another animal;
- (c) is sold, given away, or dies; and
- (d) is moved to another address... (Section 4-97, Leon County Code of Laws and Section 767.12(3), Florida Statutes).

25. The owner must neuter dangerous animals and tattoo dangerous (or aggressive animals) and it is unlawful for the owner of a dangerous dog to permit the dog to be outside a proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under control of a competent person. (Section 4-98, 4-99, Leon County Code of Laws and Section 767.12(4), Florida Statutes)

26. Finally, Section 767.14, Florida Statutes authorizes a local government to:

- (a) place further restrictions or additional requirement on the owner of a dangerous dog; and
- (b) develop procedures for the implementation of the act, provided the provisions of the act is not lessened by such requirements.

CONCLUSION OF LAW

27. This Court has jurisdiction over this matter pursuant to Section 86.011, Florida Statutes, and Section 34.01(b), Florida Statutes, giving the county court jurisdiction to hear all violations of municipal and county ordinances.

28. While Leon County has chosen to define a "dangerous animal" in a similar manner as the Legislature has done for a "dangerous dog," its definition of "aggressive animal" is not provided in state law. The County's desire to enforce its dangerous animal ordinance through Chapter 4, Leon County Code of Laws is clear. Leon County has statutory authority to regulate the ownership of animals for the protection of Leon County citizens. Pursuant to Section 125.01(1)(t), Florida Statutes, "Leon County is authorized to adopt ordinances... necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law."

29. The Third District Court of Appeal has held that a county can create a separate scheme for hearing animal control citations with appeals to circuit and county courts and such separate schemes do not violate the constitutional mandate that circuit and county courts' jurisdictions "shall be uniform throughout the state." See Metropolitan Dade County v. Hernandez, 708 So. 2d 1008 (Fla. 3rd DCA 1998). The Court held:

The County contends, and we agree, that its separate scheme for animal control citation appeals is constitutional and follows the constitution's mandate that the circuit and county courts' jurisdictions "shall be uniform throughout the state." Art. V § 5(b), 6(b), Fla. Const. The County's separate scheme is supported by chapter 162, Florida Statutes (1995). Chapter 162 allows counties to enforce their ordinances through code enforcement boards with

appeal to the circuit court (chapter 162, part I) and/or through code enforcement officers with appeal to the county court by trial de novo (chapter 162, part II) or, indeed, "by any other means." See sections 162.13, 162.21(8), Fla. Stat. (1995). Id at 1010.

30. Leon County has chosen to enforce its ordinance through an alternative system of direct appeals from its classification committee to a "court of competent jurisdiction." As the Court described in Metropolitan Dade County, the County is free to adopt an enforcement scheme which best suits its needs:

"Section 162.12(2), of Part I clearly and explicitly confers authority upon the County to adopt, by ordinance, a completely alternative code enforcement system to permit either a code enforcement board or an administrative hearing officer to conduct hearings and assess fines for code violations ... The trial court correctly determined that in this section, the legislature did not limit the County's alternative system to the exact procedures set forth in Parts I and II of Chapter 162. Nor did the legislature preclude the County from combining any features of these parts." Id at 1010, 1011.

31. Petitioners do not challenge the county's right to enforce its animal control ordinance through an alternate system of direct appeal to a court. However, Petitioners argue the ordinance is vague in advising litigants which court they must turn to in order to seek relief from an erroneous Classification Committee decision. This Court agrees and finds no rational basis for the present vagueness of the County's ordinance. In Metropolitan Dade County, the court noted a dog owner's due process rights may be affected if the owner's enjoyment of their dogs is taken without due process of law:

The Due Process Clause of the Fourteenth Amendment requires that deprivation of life, liberty, or property be preceded by a notice and opportunity for hearing appropriate to the nature of the case. Armstrong v. Manzo, 380 U.S.

545, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965). In the County of Pasco v. Riehl, 635 So.2d 17 (Fla. 1994), the court noted Riehl's private property was subject to, among other things, physical confinement tattooing or electric implantation, and muzzling. In the aggregate, these restrictions are a deprivation of property and before such restrictions are imposed the property owner must be afforded an opportunity to be heard. Id at 1011.

32. In Florida, an animal becomes private property when it is under the "private control, confinement and possession" of an owner. Barrow v. Holland, 125 So.2d 749, 751 (Fla. 1960).

33. Persons of common intelligence must not be left to guess at the meaning of the ordinance. Where there is doubt about a statute or ordinance in a challenge for vagueness, the doubt must be resolved in favor of the citizen and against the state. Brown v. State, 629 So.2d 841 (Fla. 1994); In this case the county's ordinance should clearly identify the court and available remedies which are available to owners of animals classified as "aggressive" or "dangerous."

34. Section 767.12(d), Florida Statutes requires each local governing authority to establish appeal procedures which conform to Section 767.12, Florida Statutes. That section clearly directs appeals to county court. Until Leon County clarifies its ordinance otherwise, its language: "apply to a court of competent jurisdiction for any remedies which maybe available" shall be construed to mean "Leon County Court" for animals classified as "aggressive" or "dangerous" since the potential punishments and restrictions may be equally harsh for either classification.

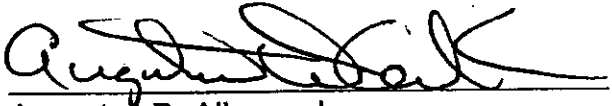
Accordingly, it is

ORDERED and ADJUDGED

(1) That Petitioners, Leonard J. Clark and Debra K. Clark are entitled to, appeal the October 10, 2002 determination of the Classification Committee; and

(2) the instant request for Declaratory Relief shall be considered a properly filed appeal of the October 10, 2002, Classification Committee Determination to the Leon County Court. The Clerk of Court is directed to promptly notice the instant action for hearing on Petitioners' appeal. Defendant's Motion for Summary Judgment is DENIED as MOOT and also there exists a disputed issue of material fact: whether Pete injured or killed a domestic animal.

DONE and ORDERED at Tallahassee, Leon County, Florida this 25th day of September, 2003.


Augustus D. Aikens, Jr.
County Court Judge

Copies furnished to:

Leonard J. Clark, 1903 Faulk Drive, Tallahassee, Florida 32303

Debra K. Clark, 1903 Faulk Drive, Tallahassee, Florida 32303

Cherry A. Shaw, Esquire, 301 South Monroe Street Room 443E, Tallahassee, Florida 32301